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No. 91-1010

IN THE
Supreme Court of the United States
October Term, 1991

PUERTO RICO AQUEDUCT AND SEWER AUTHORITY,
Petitioner,

vs.

METCALF & EDDY, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MOTION FOR SUMMARY DISPOSITION

Peter W. Sipkins
Counsel of Record
Carol A. Peterson
DORSEY & WHITNEY
2200 First Bank Place East
Minneapolis, MN 55402
Telephone: (612) 340-2600

Of Counsel:
Jay A. Garcia-Gregory
FIDDLER, GONZALEZ & RODRIGUEZ
P.O. Box 3507
San Juan, Puerto Rico 00936-3507
Telephone: (809) 759-3113

Attorneys for Respondent

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INTRODUCTION

Pursuant to Supreme Court Rules 16.1 and 21, Metcalf & Eddy, Inc., respondent herein, moves for summary disposition of this case. In the alternative, Metcalf & Eddy requests that the Court determine this case based upon the briefs filed by the parties to date and set this case for oral argument during the current Term.

ARGUMENT

The Puerto Rico Aqueduct and Sewer Authority ("PRASA"), petitioner herein, requested summary disposition of its petition for certiorari on the issue of whether it was entitled to take an interlocutory appeal, under the collateral order doctrine, from the district court's denial of its claim of Eleventh Amendment immunity.¹ Now that the Court has granted certiorari, Metcalf & Eddy agrees that summary disposition of the appellate procedural issue raised in the petition is appropriate.² The appellate procedural issue has been fully briefed in the First Circuit and in the parties' prior submissions to this Court. Accordingly, M&E joins PRASA in urging the Court to dispose summarily of the procedural issue presented.

Important practical concerns also require that the Court adjudicate the procedural issue summarily. For Metcalf & Eddy, these practical concerns are a matter of fundamental fairness and justice. This is a straightforward breach of contract case that is ready for trial on May 18, 1992, the date set by the district court. Metcalf & Eddy is attempting to collect more than \$30 million of its own funds which it has already advanced on behalf of PRASA and Metcalf & Eddy's sole interest is in

¹ PRASA stated, "[B]ecause the facts relevant to this Court's disposition of this jurisdictional question are not in dispute, the Petitioner respectfully suggests that summary disposition of this appeal may be appropriate . . ." Pet. at 24.

² The appellate procedural issue on which certiorari was granted is appropriate for summary disposition, but the merits of PRASA's claim of Eleventh Amendment immunity are not. See Brief in Opp. at 15 n. 8.

the speedy resolution of its claim. The costs of prosecuting this action and the loss of use of its capital to date exceed \$9.5 million, and are having an adverse impact on the company. An unnecessarily protracted appeal in this Court will add to that burden.

Unless this Court acts summarily, the case will be halted pending the decision next Term on whether PRASA is entitled to take an interlocutory appeal under the collateral order doctrine. If PRASA prevails on that issue next Term, the case will then be remanded to the First Circuit for consideration of the merits of PRASA's interlocutory appeal. If PRASA loses on the procedural issue next Term, the case will be remanded to the district court for trial at that time. In either event, there will be substantial delay in the resolution of a case that is ready for trial now.

Metcalf & Eddy's interest in the outcome of the appellate procedural issue on which certiorari has been granted is negligible. Moreover, no court has ever ruled that PRASA is an arm of a State entitled to Eleventh Amendment immunity and the First Circuit has strongly suggested it will rule against PRASA when given the opportunity here. See Pet. App. A-12 ("substantial doubt" that PRASA is entitled to Eleventh Amendment immunity); Paul N. Howard v. Puerto Rico Aqueduct and Sewer Auth., 744 F.2d 880, 886 (1st Cir. 1984) (dictum) ("[w]e doubt that PRASA is sufficiently an arm of the state to qualify for the protection of the Eleventh Amendment"), cert. denied, 469 U.S. 1191 (1985); see also Brief in Opp. at 15-16. Full briefing and argument on the appellate procedural issue is an unnecessary delay and expense when both parties agree that summary disposition is appropriate and the greatest likelihood is that PRASA will ultimately lose on the merits of its claim of Eleventh Amendment immunity. Accordingly, the Court should summarily resolve the

procedural issue.

In the alternative, Metcalf & Eddy requests that the Court determine this case based upon the briefs filed by the parties to date and set this case for oral argument during the current Term.

CONCLUSION

For the foregoing reasons, Metcalf & Eddy requests that its motion for summary disposition be granted.

Dated: March 13, 1992 Respectfully submitted,

Peter W. Sipkins
Counsel of Record
Carol A. Peterson
DORSEY & WHITNEY
2200 First Bank Place East
Minneapolis, MN 55402
Telephone: (612) 340-2600

Of Counsel:
Jay A. Garcia-Gregory
FIDDLER, GONZALEZ & RODRIGUEZ
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Attorneys for Respondent